IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.M.P.(M) No.443 of 2007

Decided on: ***August 08, 2007.***

Vidya Pal ***…Petitioner.***

VERSUS

State of Himachal Pradesh ***….Respondent.***

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Petitioner: **Mr.Deepak Kaushal, Advocate.**

For the respondent: **Mr.Ashok Chaudhary, Addl.A.G.**

Kuldip Singh, Judge (Oral)

This is an application under Section 439 Cr.P.C. for releasing the petitioner on bail in F.I.R. No.44/07 dated 26.5.2007 under Section 376 I.P.C. registered at Police Station, Reckong Peo, District Kinnaur, Himachal Pradesh. The petitioner has alleged that prosecutrix submitted a complaint dated 26.5.2007 alleging therein that she was engaged with petitioner on 9.6.2006 and their marriage was fixed in July, 2007. On 11.6.2006 petitioner called her at Wangtu and took her to Reckong Peo in the quarter of his sister and stayed there where the petitioner had sexual intercourse with her. Now, the petitioner has absconded with another girl of village Sapni. The prosecutrix has alleged that petitioner deceived her and had

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Whether the reporters of the local papers may be allowed to see the judgment? Yes.

sexual intercourse with her taking undue advantage of her engagement. The learned counsel for the petitioner has submitted that a false case has been registered against the petitioner after one year of the alleged incident. The petitioner earlier filed Cr.M.P.(M) No.353 of 2007 in this Court for grant of anticipatory bail which was not pressed and was dismissed on 13.6.2007. The petitioner surrendered on 14.6.2007 before the police and since then he is in custody. He filed another bail application which has been dismissed by learned Sessions Judge, Kinnaur, Sessions Division at Rampur, on 23.6.2007. The petitioner has been falsely implicated in the case. The petitioner is a Computer Engineer and his entire career is at stake.

2. The application has been opposed by learned Additional Advocate General who has submitted that petitioner deceived the prosecutrix and had sexual intercourse with her under the garb of engagement. During investigation case under Section 376 I.P.C. has been fully established against the petitioner. The petitioner is involved in serious offence. In case petitioner is released on bail, he is likely to win over the prosecution witnesses. He has prayed for dismissal of the application.

3. I have heard learned counsel for the petitioner and learned Additional Advocate General for the respondent / State and gone through the record.

4. The prosecutrix had submitted an application dated 26.5.2007 to Superintendent of Police, Kinnaur at Reckong Peo alleging therein that she was engaged with petitioner as per local

custom on 9.6.2006 at Panvi. Their marriage was fixed in July, 2007. The petitioner on 11.6.2006 called her at Wangtu and took her to Reckong Peo in a bus and kept her in his sister's quarter. On that night he had forcible intercourse with her. Now petitioner has absconded with another girl of village Sapni. He has ruined her life. He took the benefit of his engagement and had sexual intercourse with her. On this, the case was registered against the petitioner.

5. The learned Additional Advocate General has submitted that the investigation in the case is complete and final opinion of the doctor is to be taken on the basis of report of the Chemical Examiner and thereafter challan is to be put up in the Court against the petitioner. The prosecutrix is 22 years of age. In the complaint dated 26.5.2007 she has alleged forcible sexual intercourse with her and has also alleged that the petitioner has taken benefit of her engagement with him and had sexual intercourse with her. The alleged occurrence is of 11.6.2006 but application was submitted to Superintendent of Police by prosecutrix on 26.5.2007. It is not the case of the prosecutrix that her engagement with the petitioner and commission of sexual intercourse by him with her was pre planned and only to cover all this drama of engagement was enacted by the petitioner. The apprehension of the learned Additional Advocate General that petitioner will win over the prosecution witnesses in case he is released on bail is without any foundation. In any case, law will take its own course in case petitioner will misuse the bail.

6. In the facts and circumstances of the case, the application is allowed. The petitioner is ordered to be released on

bail subject to his furnishing personal bond in the sum of Rs.25,000/- with one surety in the like amount to the satisfaction of Sessions Judge, Kinnaur at Rampur. The bail, however, is subject to the conditions that the petitioner shall not leave the State of Himachal Pradesh without the permission of Sessions Judge, Kinnaur at Rampur and shall not tamper with the prosecution witnesses. The observations made in the order shall not be construed as expression of opinion on the merits of the case.

Copy ***dasti,*** on usual terms.

August 08, 2007 ***(Kuldip Singh), J.***

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